

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE NORTHERN DISTRICT OF GEORGIA  
3                   ATLANTA DIVISION

4                   UNITED STATES OF AMERICA                         )  
5   )  
6   )  
7   )  
8   )  
9   )  
10                  Plaintiff,   )  
11                  v.   )  
12                  )   )  
13                  EHSANUL ISLAM SADEQUEE (2)                     )  
14                  )   )  
15                  Defendant.   )  
16                  )   )  
17                  )   )  
18                  )   )  
19                  )   )

20                  TRANSCRIPT OF AUDIO RECORDED PROCEEDINGS  
21                  BEFORE THE HONORABLE GERRILYN G. BRILL,  
22                  UNITED STATES MAGISTRATE JUDGE

23                  Monday, January 5, 2009

24                  APPEARANCES OF COUNSEL:

25                  For the Plaintiff:                                     OFFICE OF THE U.S. ATTORNEY  
1   (By: David E. Nahmias  
2   Robert C. McBurney)

3                  For the Defendant:                                     GARLAND SAMUEL & LOEB  
4   (By: Donald Franklin Samuel)

5                  *Proceedings recorded by digital audio, then transcribed by  
6   mechanical stenography and computer by  
7   NICHOLAS A. MARRONE, RMR, CRR  
8   1714 U. S. Courthouse  
9   75 Spring Street, S.W.  
10   Atlanta, GA 30303  
11   (404) 215-1486*

1                   (FTR Media File Judge Brill 1834:)

2                   Monday Morning Session

3                   January 5, 2009

4                   10:13 a.m.

5                   --- --- --

6                   P R O C E E D I N G S

7                   --- --- --

8                   (In open court:)

9                   THE COURT: This is the arraignment on the Third  
10                  Superseding Indictment.

11                  Mr. Samuel, has Mr. Sadequee been provided with a  
12                  copy of the Third Superseding Indictment?

13                  MR. SAMUEL: Yes, Your Honor.

14                  THE COURT: All right. Mr. Sadequee, now is the  
15                  time when you are called upon to enter your plea, which  
16                  I expect will be not guilty, to the Third Superseding  
17                  Indictment.

18                  You are entitled to have the indictment read or  
19                  explained to you at this time before you enter your plea.

20                  Do you need any reading -- or do you want me to  
21                  read or explain the indictment to you before you enter your  
22                  plea?

23                  THE DEFENDANT: No, I have read it.

24                  THE COURT: So, Mr. Samuel, does your client waive  
25                  the formal reading of the indictment?

1                   MR. SAMUEL: Right, it doesn't need to be read in  
2 open court. Thank you, Your Honor.

3                   THE COURT: All right. Then, Mr. McBurney, would  
4 you verify his signature on the plea.

5                   MR. McBURNEY: Judge, Mr. Sadequee has declined to  
6 sign the Plea with Counsel Form. Mr. Samuel has signed it.  
7 I can verify his.

8                   THE COURT: All right.

9                   MR. McBURNEY: I guess I could ask Mr. Sadequee on  
10 the record if he's not signing anything.

11                  Mr. Sadequee, this is a Plea with Counsel  
12 Form. Had you signed it you would have been telling the  
13 Court that you are entering a plea of not guilty to the four  
14 counts in your Third Superseding Indictment.

15                  Mr. Samuel, is this your signature on the form?

16                  MR. SAMUEL: It is.

17                  THE COURT: And, Mr. Sadequee, you are declining to  
18 sign the form; is that correct?

19                  THE DEFENDANT: Yes.

20                  MR. McBURNEY: Okay.

21                  THE COURT: All right. Mr. Samuel, I'm assuming  
22 that you just want the Court to enter a not guilty plea?

23                  MR. SAMUEL: Yes, Your Honor.

24                  THE COURT: All right. The Court docket will  
25 reflect I will enter a not guilty plea for him.

1                   And the case has previously been transferred to  
2 District Court Judge Duffey who will handle the trial of the  
3 case.

4                   Let's see. Is there any need, Mr. Samuel, for me  
5 to have another pretrial conference on this case?

6                   MR. SAMUEL: There may be, Your Honor. I'm not  
7 sure that we have to schedule it today.

8                   Mr. Sadequee does want to address the Court  
9 today.

10                  I think -- I mean, there are certainly going to be  
11 matters -- you are doing the CIPA hearings, aren't you?

12                  THE COURT: I don't know yet. We have to check. I  
13 will check with Judge Duffey.

14                  MR. SAMUEL: We are certainly going to be back  
15 before you, I assume, one or more times. Whether you want to  
16 set a pretrial conference today or not or some kind of status  
17 conference I don't know.

18                  THE COURT: Well, I will check with Judge Duffey to  
19 see what role, if any -- unless he's given you some  
20 indication of what role he would like me to play with respect  
21 to the superseding indictment?

22                  MR. McBURNEY: We do have a status conference with  
23 Judge Duffey already calendared for by the scheduling order  
24 in about three weeks, late January.

25                  THE COURT: All right. Well, I will check with him

1 on that.

2 All right. What does Mr. Sadequee want to talk  
3 about? I don't really -- Mr. Sadequee, I will give you a  
4 brief opportunity, although this really isn't the --

5 THE DEFENDANT: (*A phrase in a foreign*  
6 *language.*) As the Court knows, back in midSeptember, there  
7 was a hearing, a closed, a sealed hearing, with regards to  
8 the covert interrogation program which I had requested a  
9 hearing for.

10 On October 28th, about a month later,  
11 Brian Richardson, who is a client of Stephanie Kearns, who  
12 used to be my lawyer and was the counsel which I had concerns  
13 over about this covert interrogation program, back in the  
14 September 9th hearing I mentioned it to the Court and  
15 I mentioned that I believe Brian Richardson, her client, who  
16 was in the SHU with me was involved in this.

17 So on October 28th he attacked me right after a  
18 hearing, a meeting with Don Samuel and my other lawyer,  
19 Mr. Khurrum Wahid.

20 Since then a number of things have  
21 happened. I believe I have been subject to a government  
22 program where they have entered a demon, I can't be exact,  
23 because --

24 THE COURT: Say that again?

25 THE DEFENDANT: A demon or a spirit of some sort

1       into me, for what purposes I'm not exactly entirely clear at  
2       this point.

3           But I request, as I did back in September, for a  
4       hearing into this covert interrogation program. And also my  
5       counsel had filed some motion for -- with regards to  
6       confidential informants and then the government -- my  
7       understanding is that the government has said that their  
8       response will be dependent upon me bringing more information  
9       in a hearing about this and providing witnesses.

10          So there are some witnesses, I mean, which I would  
11       like to bring, and if the Court requests that this is the  
12       time that I should mention some of my witnesses and some of  
13       what I believe that they would say, then I could provide that  
14       right now, if that's necessary.

15          Because back in September, my understanding was  
16       that we can't have a hearing until some information is  
17       presented to the Court as to what witnesses I would intend  
18       to -- or I intend to bring and what type of testimonies I  
19       believe that they would give to the Court.

20          THE COURT: Have you discussed this with your new  
21       attorney?

22          And remind me what the other attorney's name is.

23          MR. SAMUEL: Khurrum Wahid.

24          THE COURT: Mr. Wahid. Have you discussed this  
25       with Mr. Wahid?

1                   THE DEFENDANT: I haven't been able to discuss this  
2 in detail, although I did discuss some of the things, and he  
3 said that he would investigate some of the issues. But he --  
4 he's in Miami, and I haven't been able to contact him on a  
5 regular basis, and I haven't seen, I mean, him in quite some  
6 time. I believe it's been a month or so since I last saw  
7 him.

8                   But some of the issues I spoke with Mr. Wahid, and  
9 he said he would look into it, and then he really --

10                  THE COURT: Let me ask the government. What's  
11 the -- there was a motion that was filed right before  
12 Mr. Wahid was appointed regarding this allegation. Do you  
13 know the status of that?

14                  MR. NAHMIAS: We responded with regard to the  
15 confidential informants to make it very clear that we had  
16 absolutely no informants from within the defense camp, the  
17 defense lawyers or anyone associated with the defense.

18                  We also said that we are not obligated to disclose  
19 whether we have any other informants in the world regarding  
20 this case, and there are obvious sensitivities about  
21 informants. And that's where it was left.

22                  With regard to this attack by Mr. Richardson,  
23 I think the warden has responded to counsel and we obviously  
24 immediately investigated.

25                  Mr. Richardson -- they were crossing paths in a

1 room after having seen their counsel, and Mr. Richardson, who  
2 was being restrained by two guards and had leg manacles and  
3 handcuffs on, broke away from his two guards and head-butted  
4 the defendant, causing very minor injuries, and was  
5 immediately restrained.

6 And Mr. Richardson has been disciplined for that  
7 incident, and the prison is now going to ensure that there is  
8 no way that Mr. Sadequee can be in Mr. Richardson's  
9 presence.

10 But it was not a -- Mr. Richardson broke away from  
11 two guards who were holding him while he was handcuffed and  
12 leg manacled. And so there was no involvement whatsoever by  
13 the government in that incident.

14 THE COURT: All right. With respect to the motion  
15 on confidential informants, that was, as I recall, filed  
16 after I certified it ready for trial. But I will check with  
17 Judge Duffey and see if he wants me to do anything further on  
18 that.

19 Mr. Sadequee's comments raise the issue of his  
20 mental state.

21 Mr. Samuel, is Mr. Wahid aware of his contentions  
22 regarding demons, or does he have any concerns regarding the  
23 defendant's mental state?

24 MR. SAMUEL: We discussed these issues, Your Honor.

25 THE COURT: As far as the attack by Mr. Richardson,

1       it sounds as if the prison authorities are responding to it,  
2       and that the Court -- that there is no need for the Court to  
3       get involved in that.

4                  So I think that covers everything at this  
5       time. There is really nothing further we can do.

6                  THE DEFENDANT: I also wanted to ask Mr. Samuel to  
7       file a motion for speedy trial I just want to put on the  
8       record.

9                  THE COURT: There is a date scheduled for the  
10      trial, and I think that will be a firm date.

11                 But, Mr. Samuel, you can tell Mr. Wahid at  
12      Mr. Sadequee's request.

13                 THE DEFENDANT: Would it be possible to move it  
14      forward? I mean --

15                 THE COURT: Judge Duffey is the one that would have  
16      the trial, so your attorneys would have to check with  
17      him. I doubt it, because there are a number of things  
18      pending.

19                 THE DEFENDANT: With regards to the hearing about  
20      confidential informants, even beyond -- I mean, without or  
21      outside of the defense counsel, I believe there is other  
22      confidential informants, such as my co-defendant Haris;  
23      Mr. Ahmed, that is. And, you know, I would like to have -- I  
24      believe if I bring certain witnesses and question them, you  
25      know, I will be able to establish that. So --

1                   THE COURT: That's something that you really need  
2 to discuss with your attorneys, and your attorneys can  
3 discuss with Mr. Ahmed's attorney, Mr. Martin, who is in the  
4 courtroom now, and Mr. Samuel can discuss that with him.

5                   But it's not really something for me or any judge  
6 to get involved with at this stage. There is always the  
7 possibility in a multidefendant case -- and I don't have any  
8 indication that that's happening here -- but there is always  
9 the possibility that one defendant will start cooperating  
10 with the government and in fact be an informant against the  
11 other defendant. I'm sure your attorneys have discussed that  
12 possibility with you.

13                  All right. Anything further?

14                  MR. SAMUEL: Judge, there is one thing I want to  
15 raise.

16                  We have tried to get some medical records from the  
17 prison, and Mr. McBurney was facilitating that. There seems  
18 to be some confusion at the prison whether they will release  
19 that to me or not.

20                  At one point I was told they had to come to me, and  
21 Mr. McBurney reported to me that the prison will only release  
22 them to Mr. Sadequee, then he has to give them to me because  
23 of privacy reasons.

24                  He's being held in prison. No, we are not going to  
25 give you any of your medical records. It has to come through

1 your attorneys.

2           I would generally not ask you to get involved in  
3 this, but the prison doesn't talk to me anymore, they refuse  
4 to have any communications with me.

5           So I go to Mr. McBurney, who has been very --  
6 always is very helpful in being the messenger at this  
7 point. I would ask the Court to order the government, not  
8 really the U.S. Attorney's Office as much as the prison, to  
9 provide all medical records that they have.

10          And I'm referring to all physical medical issues,  
11 psychological medical reports, all of which they have, but  
12 apparently it takes either an act of Congress or a court  
13 order to get those released to us.

14          If there are any medical records they have  
15 whatsoever that are being withheld from us, we would like to  
16 know why they are being withheld and whether we can have a  
17 hearing to unwithhold them.

18          Otherwise something -- there must be some mechanism  
19 for me to get these records without having to go back and  
20 forth with Mr. McBurney, he getting different reports from  
21 the prison, and my client is getting different reports when  
22 he asks. I would just like a court order releasing all  
23 medical records up-to-date, through today, January 5th, '09,  
24 to Mr. Samuel.

25          THE COURT: All right. Mr. McBurney, do you have

1 any objection to the Court issuing an order for that?

2 MR. McBURNEY: I would ask that we start with a  
3 subpoena.

4 I don't dispute Mr. Samuel's frustration. He's  
5 been very good at letting me know what's going on, and at  
6 latest report the Bureau of Prisons said that they would  
7 release any and all records to the defendant, they are his  
8 records, but they were weary of releasing them to some third  
9 party, even counsel, absent a waiver from the defendant.

10 So my suggestion is before we invoke the Court's  
11 authority via an order and set some precedent that way, we  
12 try a subpoena. Plus I will call again today to say, you  
13 know, you guys need to do something, the Court is trying  
14 figure out why this is taking so long.

15 THE COURT: In appointed cases, generally there has  
16 to be a court order in order to get a subpoena.

17 MR. SAMUEL: The subpoenas say it is a court order  
18 anyway.

19 THE COURT: I mean, I could do the order  
20 authorizing the subpoena.

21 MR. McBURNEY: Right, but that's an order  
22 authorizing a subpoena, as opposed to telling BOP what to  
23 do.

24 THE COURT: Right.

25 MR. McBURNEY: I know that's an intermediate step,

1       but we would ask for that. And if that doesn't work, then I  
2       think BOP needs to explain to you what is going on.

3           THE COURT: All right. I will do an order  
4       authorizing the subpoena. If you would present that to me,  
5       Mr. Samuel.

6           I know I have done that before in other cases even  
7       for the Federal Defender Program.

8           MR. SAMUEL: I'm sorry?

9           THE COURT: I know that I have done orders --

10          MR. SAMUEL: Yes.

11          THE COURT: -- authorizing subpoenas for medical  
12       records from prisons. I don't recall specifically whether it  
13       was the federal pen, but I know I have done that before for  
14       appointed counsel. And I will do that in this case if you  
15       present such an order.

16          MR. SAMUEL: I will get it in writing in  
17       twenty-four hours.

18          THE COURT: All right. Anything further?

19          MR. SAMUEL: Mr. Sadequee has one more issue.

20          THE DEFENDANT: I had asked the warden in the  
21       prison about obtaining an exorcist, and he said that he  
22       would -- he was not sure if that would be possible.

23          So I would like to request if the Court could ask  
24       the warden or something to, you know, allow that to take  
25       place, for me to see an exorcist.

1                   THE COURT: I will decline that request.

2                   All right. We will be in recess.

3                   THE CLERK: All rise.

4                   MR. McBURNEY: Judge, I'm sorry, before -- we had  
5 two points.

6                   One on the issue of discovery. Discovery is  
7 complete as far as we know. There are hard drives that are  
8 available for defense review, or if we get blank hard drives,  
9 we will give them copies of the hard drives.

10                  Then we discussed at Defendant Ahmed's arraignment  
11 the issue of new motions adopting and transferring over, if  
12 you will, all of this Court's rulings, reports and  
13 recommendations, and all the parties filings.

14                  You had indicated you were going to file  
15 something. We would make the same request for Defendant  
16 Sadequee.

17                  THE COURT: All right. We will do an order  
18 transferring or making sure that the docket reflects that all  
19 of the previous motions and pleadings are applicable to this  
20 new case.

21                  MR. McBURNEY: And Judge Duffey in his orders that  
22 have been coming out has begun to do that. He's been issuing  
23 some rulings adopting your R&Rs and incorporating the fact  
24 that there has been superseding indictments.

25                  THE COURT: All right. We will do whatever needs

1 to be done to make sure that the previous docket applies to  
2 the superseding case.

3 MR. McBURNEY: Okay. Thank you.

4 THE COURT: All right. Anything further?

5 MR. SAMUEL: No, Judge.

6 THE COURT: All right. We will be in recess.

7 THE CLERK: All rise.

8 (Proceedings adjourn at 10:31 a.m.)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

UNITED STATES OF AMERICA :  
NORTHERN DISTRICT OF GEORGIA :

I, Nicholas A. Marrone, RMR, CRR, Official Court Reporter of the United States District Court for the Northern District of Georgia, do hereby certify to the best of my ability that the foregoing 16 pages constitute a true transcript of audio recorded proceedings had before the said Court, held in the city of Atlanta, Georgia, in the matter therein stated.

In testimony whereof, I hereunto set my hand on this, the 28th day of January, 2009.

/s/ Nicholas A. Marrone

NICHOLAS A. MARRONE, RMR, CRR  
Registered Merit Reporter  
Certified Realtime Reporter  
Official Court Reporter  
Northern District of Georgia